

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

UNITED STATES OF AMERICA                    )  
  )  
                  vs.    )  
  )  
ROGER DALE FRANKLIN,    )  
  )  
                                  Defendant.    )  
\_\_\_\_\_

TRANSCRIPT OF INQUIRY TO COUNSEL  
BEFORE THE HONORABLE DAVID C. KEESLER  
UNITED STATES MAGISTRATE JUDGE  
AUGUST 18, 2015

APPEARANCES:

On Behalf of the Government:

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On Behalf of the Defendant:

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Charlotte, North Carolina

P R O C E E D I N G S

(Transcript of proceedings digitally recorded on August 18, 2015.)

THE COURT: Okay. Give me just a second here to take a look at a couple things.

(Pause.)

THE COURT: Okay. The next matter is Roger Dale Franklin. The number on this is 5:14-cr-81.

Mr. Franklin, good morning.

THE DEFENDANT: Good morning.

THE COURT: Mr. Thorsen is here today representing Mr. Franklin and Mr. Kaufman is here for the government on this. The matter is on for inquiry to status of counsel. So let's -- let's take a step back before we drill down here and get a little -- get a little procedural background.

Mr. Kaufman, is this your case?

MR. KAUFMAN: It is, Your Honor.

THE COURT: Well, that's -- that's a convenient thing to have you here, then. Would you mind telling me a little bit about this.

MR. KAUFMAN: Yes, Your Honor.

THE COURT: Procedurally, you know what I mean.

MR. KAUFMAN: Sure. Sure. About five weeks ago Mr. Franklin went to trial. He was convicted. And we have not gotten the draft PSR just yet, but that would be the next

1 step in the process.

2 THE COURT: What was he convicted of?

3 MR. KAUFMAN: He was convicted of methamphetamine  
4 trafficking, a ten to life charge. There were, I think, a  
5 couple of 924(c) convictions as well. Actually, I've got the  
6 verdict sheet here.

7 So he was convicted of 500 grams or more of meth in  
8 the conspiracy. He was convicted of counts two, three, four,  
9 five, six -- so he was convicted on every count in the  
10 indictment, Your Honor.

11 THE COURT: Okay. Thank you. So we're in the  
12 presentence phase.

13 MR. KAUFMAN: Yes, Your Honor.

14 THE COURT: Okay. All right. Mr. Thorsen, I have  
15 your written motion which I have read a couple of times, and  
16 it encloses a written statement purportedly by Mr. Franklin  
17 which is pretty blunt. Would you care to say anything about  
18 this before I hear from him?

19 MR. THORSEN: No, Your Honor. Your Honor, I did  
20 represent Mr. Franklin at trial and we are at the presentence  
21 report. And based on his acceptance of responsibility, what  
22 he wrote on that, I wanted to bring it to the attention of the  
23 court before I proceeded to represent him. I, of course,  
24 deny -- I will be denying that I lied to him as he indicates.

25 THE COURT: Right. Okay. Mr. Franklin, the issue

1 for today is -- well, this is called an inquiry to counsel  
2 hearing, so the issue for today is whether Mr. Thorsen will  
3 continue to represent you as your case proceeds through the  
4 presentence stage and on toward a sentencing hearing or  
5 whether we would consider substituting another lawyer for him.  
6 Perhaps I'm stating the obvious, but that's the issue for  
7 today. Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: I have read the statement you made on  
10 the document styled U.S. Probation Office Western District of  
11 North Carolina Acceptance of Responsibility. And it's -- it's  
12 document number 41-1 and it's a matter of record so it's right  
13 there for anybody to read if they care to, and I've read it  
14 several times.

15 THE DEFENDANT: I didn't know that that was going to  
16 get to you, but I didn't know what to do to get rid of him.  
17 But I could tell you why I want to get rid of him if you'll  
18 listen to me for a minute.

19 During the trial he didn't do nothing to help me at  
20 all. He didn't do his job for one. Nothing. I tried to get  
21 him to present a letter that one of the girls had wrote me  
22 that said if I didn't give her a car that she wanted that  
23 belonged to me, that she was going to testify in court that I  
24 was a drug dealer, biggest drug dealer in the county. She  
25 said, I will bury you, you piece of shit.

1           Anyway, I tried to get him to present that letter  
2 when she was on the stand. He said we don't need to. They  
3 ain't proved you've done nothing. They're going to dismiss  
4 your charges.

5           And one of the officers -- the police officer got up  
6 there and lied and it's right there in the discovery.  
7 Discovery says one thing. She gets on the stand, says  
8 something else. He won't say nothing about that.

9           They used hearsay evidence. He wouldn't object to  
10 that. When one of the cops got up there and said this other  
11 cop that ain't here told me that he dropped dope on the  
12 ground, that's hearsay and he wouldn't object to that. He  
13 wouldn't do nothing.

14           And then I asked the judge to let me talk to him  
15 because they wanted to know if I wanted to take the stand and  
16 he was saying I wasn't going to take the stand. I told the  
17 judge -- he asked me had I discussed it with him. I said I  
18 need to discuss it with him because, you know, it looks to me  
19 like I need to take the stand. So we go in the back room and  
20 we talk for 15 minutes. I tell him this stuff. You're not  
21 doing nothing, you know. I need to take the stand to defend  
22 myself.

23           Oh, you don't need to take the stand. You're going  
24 to be okay. They've not put any guns in your hand. They've  
25 not put any dope in your hand. They're not going to convict

1 you. They're going to let you go.

2 I said, Well, it don't look to me like they're going  
3 to let me go. It looks to me like you're hanging me. We need  
4 to do something.

5 Trust me. He said, They're going to let you go.  
6 When I get through with my closing argument, they're going to  
7 dismiss the charges. We don't need to put up no defense.

8 And I told him, I said, Well, it looks to me -- I  
9 asked him four or five times, Are you sure you know what  
10 you're talking about because it don't look good to me. You  
11 know, it looks to me like they're fixing to get me.

12 Oh, you're good. You're good.

13 He's an idiot, you know what I'm saying. He  
14 wouldn't do nothing. I don't want nothing to do with him. I  
15 don't want him around me. I don't even want to be here next  
16 to him. He left me hanging. He come up there and seen me  
17 every three or four weeks telling me, oh, we're going to  
18 trial, we're going to do this. I told him what -- I told him  
19 everything that happened. And then he comes down here and he  
20 throws me under the bus.

21 I don't want nothing to do with this idiot. I'll do  
22 it by myself if you can't give me another lawyer because he --  
23 if I were to went in there by myself, I wouldn't have been in  
24 the trouble that I'm in now. And I don't want nothing else to  
25 do with him. If you don't want to give me another one, I'll

1 go it alone. I don't want nothing to do with this idiot.

2           Excuse me, I'm sorry. I didn't say nothing at the  
3 trial. I didn't know I was supposed to say anything. If I  
4 was a lawyer, I wouldn't have needed him to start with. I  
5 didn't know what to do. I'm not a lawyer. Now I'm facing the  
6 rest of my life in prison because I had an idiot for a lawyer  
7 in there.

8           THE COURT: Let's just keep it -- we'll keep it  
9 calm.

10          THE DEFENDANT: Yes, sir.

11          THE COURT: Okay. I know we're all -- we're under a  
12 lot of stress here. I get that. And I'm not trying to be --

13          THE DEFENDANT: All right.

14          THE COURT: I'm not trying to --

15          THE DEFENDANT: Okay. I'm done. You get my point.

16          THE COURT: I do. I do. I just want you to know  
17 that I -- I understand that we're in a high stakes situation  
18 here.

19          THE DEFENDANT: Yes.

20          THE COURT: But I just want to make sure that we all  
21 stay calm.

22               Well, let me ask you a couple of questions that may  
23 seem obvious to you, but I need to talk with you about.

24               Obviously, we've got some more work to do in the  
25 case one way or the other. There's more work to do.

1           THE DEFENDANT: Yes, sir.

2           THE COURT: Do you think that you could work with  
3 Mr. Thorsen to prepare for your sentencing hearing?

4           THE DEFENDANT: I don't think I could. Matter of  
5 fact, I know I can't. I know I can't. I don't want to be  
6 around him.

7           THE COURT: All right.

8           Now, Mr. Franklin, I'm going to ask you a different  
9 question and I would appreciate your candor. I mean, if the  
10 Court were to consider appointing another lawyer for you, I  
11 mean, would you be open-minded about working with that lawyer?  
12 You know, lawyers aren't always going to tell you what you  
13 want to hear. A new lawyer might tell you some things that  
14 aren't good news either, you know?

15          THE DEFENDANT: Yeah.

16          THE COURT: Are you prepared to work with an open  
17 mind with a new lawyer?

18          THE DEFENDANT: Yes. I couldn't get no worse than  
19 this one. Yeah.

20          THE COURT: But you understand what I mean, right?

21          THE DEFENDANT: Yes. Yes.

22          THE COURT: I mean, a new lawyer might look at your  
23 case and some of what they tell you might be tough to hear.

24          THE DEFENDANT: Yeah.

25          THE COURT: But it would be a second look.



1 THE DEFENDANT: Yeah.

2 THE COURT: Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And I'm not trying to hit you too hard  
5 here, but some of what's happened already is not good.

6 THE DEFENDANT: It --

7 THE COURT: I mean, you've been convicted of a  
8 number of serious offenses and so a new lawyer is not going to  
9 be able to wave a magic wand over all this. A new lawyer  
10 could give you a second look at it.

11 THE DEFENDANT: Yeah.

12 THE COURT: But you'd have to be realistic and  
13 open-minded about what's possible. Do you understand what I'm  
14 saying to you?

15 THE DEFENDANT: Yes, sir. Yes.

16 THE COURT: Okay. Do you feel like the relationship  
17 between the two of y'all is pretty much broken at this point?

18 THE DEFENDANT: It's done, yeah. I don't -- I can't  
19 trust him. I mean, he told me one thing and I had my hopes  
20 built up. We had a good chance of winning. Then he went in  
21 there and just (inaudible) didn't do nothing. I shouldn't  
22 have been found guilty. I mean, maybe a conspiracy charge.  
23 He didn't do anything to defend me.

24 THE COURT: All right. Have a seat. Thanks.

25 Okay. Mr. Thorsen, the point of any of that is --

1 and I don't mean this in any way disrespectfully to  
2 Mr. Franklin. The point of all that is not the truth of  
3 what's been asserted but just the nature of the relationship  
4 at this point. It doesn't sound like you guys are going to be  
5 able to work together going forward. I mean, is that --

6 MR. THORSEN: I think that's a good assessment, Your  
7 Honor.

8 THE COURT: Okay. Can somebody tell me where we are  
9 in the presentence process? The trial was pretty recent, was  
10 it not?

11 MR. THORSEN: Your Honor, it's -- it was, yes.  
12 July 8th was the verdict. We have provided the -- I have  
13 provided information to the probation office, the 21-day  
14 forms. And I have also informed them that there was going to  
15 be a hearing on the status of counsel.

16 THE COURT: Okay. This is of little moment, but I  
17 just have to ask. I'm sometimes too curious. Was there an  
18 offer in this case; and if so, what was it?

19 MR. KAUFMAN: There were offers. There was an offer  
20 that was outstanding for a very lengthy period of time. And  
21 there may have been different iterations of offers, but the  
22 essential offer would have been a plea to the conspiracy count  
23 in one, so the ten to life. You know, the gun -- the 924(c)  
24 would have been made into a two-level gun enhancement.

25 THE COURT: Right.

1           MR. KAUFMAN: And I'm sure that there were other  
2 details; but in terms of the big picture, it was to plead to  
3 count one.

4           THE COURT: Okay. Thank you.

5           Okay. Well, I do want to be clear about what I'm  
6 doing and why I'm doing it here. The issue before the Court,  
7 at least as I see it, is whether Mr. Thorsen can continue as  
8 appointed counsel to Mr. Franklin at this point. And I'm  
9 simply applying the very familiar standard in *United States*  
10 *versus Mullen*, and we're all familiar with that three-part  
11 test.

12           I don't find that there is any particular need to  
13 make any judgment here about what happened at trial or why.  
14 That's sort of not the point. The point is whether the  
15 relationship at this point is so irretrievably broken, those  
16 are my words, but that under the *Mullen* test, Mr. Thorsen  
17 simply can't continue as Mr. Franklin's appointed lawyer.

18           And I'll also stir into the decision where the case  
19 sits. We're at a point where there's been a verdict at a  
20 trial. We're pretty early in the presentence proceeding.  
21 We've not yet had a presentence report. In other words, I  
22 feel like this is a pretty good place for new counsel to be  
23 inserted if we were thinking about doing that.

24           So without making any judgment about anybody and  
25 making any criticism of any person, Mr. Franklin or

1 Mr. Thorsen or anybody else for that matter, I just think this  
2 is probably the right time. So the Court will find that it is  
3 appropriate at this time to substitute new counsel.

4 Mr. Thorsen, are you Mr. Franklin's first lawyer?

5 MR. THORSEN: I believe so, Your Honor.

6 MR. KAUFMAN: Actually, Your Honor, we had issued  
7 Mr. Franklin a target letter a very lengthy period of time  
8 ago. He had been represented for that target process by  
9 Andrew Jennings. There was a reverse proffer. There's a lot  
10 of history on this case. And then ultimately when  
11 Mr. Franklin refused to plead to a bill of information, we  
12 then did the indictment. And I think that -- I think that  
13 probably what happened was after the refusal to plead to the  
14 bill of information, that's when Mr. Jennings went into public  
15 service.

16 THE COURT: Okay.

17 MR. KAUFMAN: And then we indicted and then I guess  
18 Mr. Thorsen was the initial attorney on that.

19 THE COURT: All right. Well, that's helpful. Thank  
20 you very much.

21 Madam Clerk, will you make whatever minute entry you  
22 believe is consistent with what I'm saying here.

23 The Court will substitute new counsel for  
24 Mr. Thorsen. Mr. Thorsen will be withdrawn from further  
25 representation of Mr. Franklin.

1 I do want to emphasize here I'm not making any  
2 judgment about any particular person here. I'm not  
3 criticizing anyone, Mr. Franklin, Mr. Thorsen, or anyone else.  
4 I'm just making a practical judgment about what I believe is  
5 best for the case. Okay.

6 So the end result of this, Mr. Franklin, is that you  
7 will have new counsel appointed by the Court. That lawyer  
8 will be selected for you by the federal defender and that  
9 lawyer will be out to see you about your case. I just beseech  
10 you, please, to keep an open mind when you meet with that new  
11 lawyer. Understand that there are going to be some  
12 limitations to what's possible.

13 THE DEFENDANT: Yes.

14 THE COURT: Please keep an open mind about what can  
15 happen here and work carefully with your new lawyer. Will you  
16 do that?

17 THE DEFENDANT: Yes. Can I tell you something?

18 THE COURT: In just a minute.

19 Mr. Thorsen, I thank you for your efforts and the  
20 service that you provide in all the cases that you work in.  
21 So we'll see you in another case soon, I'm sure. I just think  
22 that in this particular case, this makes the most sense so  
23 we'll excuse you from further representation of Mr. Franklin  
24 at this time. But we thank you for the work that you did put  
25 in.

1           Mr. Franklin, did you have something else that you  
2 wanted to say?

3           THE DEFENDANT: Yes. I plan to appeal this stuff  
4 and he has stuff in his files that I'm going to need for my  
5 appeal. Can you subpoena them files or whatever you need to  
6 do so my new lawyer can have it?

7           THE COURT: Well, it's traditional and it's  
8 customary for lawyers in the bar to provide materials when a  
9 new lawyer comes in.

10          THE DEFENDANT: Okay.

11          THE COURT: And I'm sure that Mr. Thorsen will  
12 cooperate with a new lawyer in providing appropriate materials  
13 to ensure a smooth transition.

14          Mr. Thorsen, is that right?

15          MR. THORSEN: Absolutely, Your Honor.

16          THE COURT: Okay. So you don't need to worry about  
17 that.

18          THE DEFENDANT: Yeah.

19          THE COURT: Okay. All right. Any questions?

20          MR. KAUFMAN: No, Your Honor.

21          THE COURT: Anybody?

22          MR. THORSEN: No, Your Honor.

23          THE COURT: Okay. Good luck everyone. Thank you  
24 very much.

25          (End of proceedings.)

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER  
4  
5

6 I, Cheryl A. Nuccio, Federal Official Realtime Court  
7 Reporter, in and for the United States District Court for the  
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17

18 s/Cheryl A. Nuccio

19 Cheryl A. Nuccio, RMR-CRR  
20 Official Court Reporter  
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